

**OFFICIAL TRANSCRIPT OF PROCEEDINGS**

**UNITED STATES OF AMERICA**

**NUCLEAR REGULATORY COMMISSION**

DOCKETED

JUN 19 P2:46

RULES  
ADJUDICATORY

**Title: PRIVATE FUEL STORAGE, L.L.C.**  
**(Independent Spent Fuel**  
**Storage Installation)**

**Case No.: 72-22-ISFSI**

**Work Order No.: ASB-300-347**

**LOCATION: Rockville, Md**

**DATE: Wednesday, June 17, 1998**

**PAGE 901 - 948**

**ANN RILEY & ASSOCIATES, LTD.**  
1250 I Street, NW, Suite 300  
Washington, D.C. 20005  
(202) 842-0034

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

- - - - -X  
In the Matter of : Docket No. 72-22-ISFSI  
: ASLBP No. 97-732-02-ISFSI  
PRIVATE FUEL STORAGE, L.L.C. :  
: (Independent Spent Fuel :  
Storage Installation) :  
- - - - -X

U.S. Nuclear Regulatory Commission  
11545 Rockville Pike  
3rd Floor Hearing Room, T-3-E-10  
Rockville, Maryland

Wednesday, June 17, 1998

The above-entitled prehearing conference convened  
at 1:00 p.m., pursuant to notice, before:

THE HONORABLE G. PAUL BOLLWERK, III  
Administrative Judge,  
Atomic Safety & Licensing Board Panel

DR. JERRY R. KLINE,  
Atomic Safety & Licensing Board Panel

DR. PETER S. LAM,  
Atomic Safety & Licensing Board Panel

PRESENT FOR THE APPLICANT:

Ernest Blake  
Jay Silberg  
Paul Gaukler

PRESENT FOR THE NRC STAFF:

Sherwin Turk  
Mark Delligatti

PRESENT FOR THE STATE OF UTAH:

Denise Chancellor  
Fred Nelson, Via Telephone  
Diane Curran

ANN RILEY & ASSOCIATES, LTD.  
Court Reporters  
1025 Connecticut Avenue, NW, Suite 1014  
Washington, D.C. 20036  
(202) 842-0034

1 APPEARANCES: [Continued]

2 PRESENT FOR THE ONHGO GAUDADEH DEVIA:

3 Joro Walker, Via Telephone

4 PRESENT FOR CASTLE ROCK LAND AND LIVESTOCK, L.C. and SKULL  
5 VALLEY:

6 Bryan Allan, Via Telephone

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

ANN RILEY & ASSOCIATES, LTD.  
Court Reporters  
1025 Connecticut Avenue, NW, Suite 1014  
Washington, D.C. 20036  
(202) 842-0034

P R O C E E D I N G S  
O P E N S E S S I O N

[1:05 p.m.]

JUDGE BOLLWERK: All right. Why don't we go on the record. Good afternoon. We are here this afternoon to continue a prehearing conference in the Private Fuel Storage LLC proceeding.

This morning we conducted a closed session to hear arguments from the State of Utah, Applicant Private Fuel Storage and the NRC Staff concerning the admissibility of contentions filed by the State, regarding the physical security plan for the proposed Private Fuel Storage independent spent fuel storage installation.

This afternoon we will begin with a teleconference with the other available parties in the non-physical security plan portion of the PFS proceeding to discuss the status of discovery and further scheduling.

Present today are Board members Dr. Jerry R. Kline and Dr. Peter Lam, both of whom are full-time technical members of the licensing board panel. My name is Paul Bollwerk, and I am an attorney and I am Chairman of the licensing board.

At this point we would like to have counsel for the parties identify themselves for the record, and why don't we start with the representatives for the Intervenors

1 who are joining us by telephone, then go to the Intervenor  
2 State of Utah, and then move to counsel for the Applicant,  
3 and finally to Staff counsel.

4 Mr. Nelson, why don't you go ahead and begin,  
5 please.

6 MR. NELSON: Fred Nelson, Utah Attorney General's  
7 Office, representing the State of Utah.

8 JUDGE BOLLWERK: Ms. Walker.

9 MR. WALKER: Joro Walker, representing OGD.

10 JUDGE BOLLWERK: All right, and Mr. Allen?

11 MR. ALLEN: Bryan Allen, representing Castle Rock  
12 and Skull Valley Land Companies.

13 JUDGE BOLLWERK: All right. Two things let me  
14 tell our remote visitors. If you -- when you speak, if you  
15 speak, make sure you remember to identify yourself before  
16 you start talking. It makes it much easier for the Court  
17 Reporter.

18 Also Mr. Allen, you are coming in a little low so  
19 you may need to speak up somewhat.

20 MR. ALLEN: Okay.

21 JUDGE BOLLWERK: All right. Ms. Chancellor,  
22 please.

23 MS. CHANCELLOR: Denise Chancellor and William  
24 Sinclair, State of Utah.

25 MR. BLAKE: I am Ernie Blake, with J. Silberg and

1 Paul Gaukler representing the Applicant.

2 MR. TURK: Sherwin Turk, counsel for NRC Staff,  
3 and to my right at this time is Mr. Mark Delligatti, the  
4 Project Manager.

5 JUDGE BOLLWERK: All right then. With regard to  
6 the items for discussion today, I would like to cover  
7 basically two topics. One is scheduling of either the  
8 Staff's status report of June 15th, 1998, and the second is  
9 the status of discovery efforts up to this point.

10 I guess with respect to the Staff's June 15th,  
11 1998 report, I think we can say at this point that in  
12 Government contract parlance we have received your best and  
13 final offer -- at least at this point.

14 [Laughter.]

15 JUDGE BOLLWERK: And I take it everyone has seen  
16 that document and I guess the question for -- I will allow,  
17 as I did last time, the Applicant to say anything they would  
18 like about the Staff's schedule at this point.

19 MR. BLAKE: Well, let me start by observing that  
20 we are disappointed and we really had hoped that we would  
21 see in the Staff's reporting at this juncture some progress,  
22 maybe some expectations of being able to improve on the  
23 schedules that they had earlier outlined, but what I think I  
24 saw was maybe even the greater disappointment than not even  
25 improvement, in that we seem to have lost the slack. Where

1 there were prospects of an interval of time into the future,  
2 it appears to us now that those intervals may have turned  
3 into just the last date of that interval, and to the extent  
4 that is the case, that's even more disappointing for us, but  
5 we continue to hold the hope that, as I indicated to the  
6 Board the last time we were here, that the Staff will be  
7 able to improve on that schedule.

8 We will continue to do our best to support  
9 whatever schedule they think they can meet and we'll remain  
10 hopeful that there will be progress and shortening of those  
11 schedules in the future, but, as I say, disappointment is I  
12 guess the way to express what we saw in the June 15th  
13 report.

14 JUDGE BOLLWERK: All right. One of the things I  
15 noticed in the status report was a statement about the  
16 earliest need date for storage, which is calendar year 2005.  
17 Is there anything you want to say about that or explain that  
18 further for the Board?

19 MR. BLAKE: I would like Mr. Silberg to react to  
20 that because he has worked with the individual utilities,  
21 and I think it is prompted -- maybe prompted on the Staff's  
22 part by a report which the Applicant has given to the NRC  
23 Staff which gave individual utility needs.

24 MR. SILBERG: I have had some discussions before  
25 we started this afternoon with Mr. Turk and Mr. Delligatti

1 about what the Staff meant when they said that the earliest  
2 need date for storage was calendar year 2005, and as I  
3 understand the Staff's interpretation of that, and they can  
4 address that perhaps, that is their interpretation of when a  
5 utility has no other options except perhaps shutting down  
6 its nuclear power plant, and frankly we think that that is  
7 not an appropriate mark to be -- to use.

8 The letter that we submitted on March 18, which  
9 the Staff references, was asked to do something fairly  
10 straightforward, and that is for the member utilities, not  
11 for all potential customers, but for the member utilities,  
12 provide the operational requirements for dry cask storage  
13 and projected dates of loss of full core reserve, and also  
14 what contingency plans they would have for continued  
15 operation.

16 The Staff is really saying short of shutting down  
17 an operating plant, if you have some other option, then we  
18 don't consider that to be a need date, and frankly I think  
19 they misinterpreted some of the information we have given  
20 them or perhaps used a test which I don't think is  
21 appropriate.

22 Take as an example one of the members, Genoa Fuel  
23 Tech, which is a subsidiary of Dairyland Power. Dairyland  
24 has a shut down nuclear power plant, the LaCrosse boiling  
25 water reactor. Obviously they don't need additional storage



1 in order to keep operating. They have been shut down for 10  
2 years. However, they cannot decommission that plant until  
3 they have a place to send the fuel. That does not seem to  
4 have risen to the level of a need in the eyes of the Staff,  
5 at least not for this Footnote 2 in their response.

6 Secondly, GPU Nuclear is listed as having a need  
7 to transfer spent fuel to a dry storage facility in 2003 if  
8 GPU elects to retire Oyster Creek, which is one of the two  
9 options GPU has publicly stated, the other being that they  
10 will sell the plant.

11 The Staff believes that if they could transfer  
12 that spent fuel to their own dry storage facility, which  
13 currently contains no fuel and is not yet in use, that that  
14 is an option and therefore we don't need the facility --  
15 GPU doesn't need this facility part of that time, so we  
16 think that this need data is not a real representation of  
17 what the need for this facility is, even aside from the fact  
18 that it only looks at the needs of the member companies of  
19 Private Fuel Storage and not the rest of the industry.

20 As the Board knows, there are quite a few plants  
21 that unfortunately are shut down that have fuel on-site and  
22 have nowhere to put that fuel except to continue to have  
23 scattered ISFSIs all over the country. One of the reasons  
24 that we want this facility obviously is to avoid having a  
25 hundred separate ISFSIs, but rather to have central interim

1 storage.

2 JUDGE BOLLWERK: All right. Anything further on  
3 that?

4 Anything you want to say in response, Mr. Turk?

5 MR. TURK: Yes, Your Honor. The Spent Fuel  
6 Project Office has responsibility for approval of both casks  
7 being reviewed for certification on a generic basis, as well  
8 as individual spent fuel sites -- spent fuel storage  
9 installations. There is a delicate and difficult balancing  
10 task that the Staff has to perform continually in allocating  
11 its resources so that the persons or the licensees with the  
12 greatest need can get approval of their casks or of their  
13 spent fuel storage installations promptly.

14 Unfortunately, the resources available to  
15 Government -- this agency in particular as well as I am sure  
16 other agencies -- I am sure it is true for Utah -- is not  
17 unlimited. There is a need for the agency to allocate  
18 resources in the best possible way so as to avoid doing the  
19 greatest harm or do the greatest benefit, and that is what  
20 is happening here, as well as other reviews the Staff is  
21 conducting.

22 This facility unfortunately has not referenced a  
23 cask that is certified already, probably because there is no  
24 cask suitable for that purpose, or at least the Applicant  
25 has not been able to identify a cask that is suitable for

1 that purpose.

2 The review of their application therefore has to  
3 first pass through an intermediate step with respect to the  
4 casks to be utilized. As we set out in our status report,  
5 that is a time-consuming process of its own. We laid out  
6 what the projected dates were for approval of the Holtech  
7 High Star and High Storm casks.

8 In putting forward the information to you as to  
9 what the Applicants need date was --

10 MR. WALKER: Would you speak up, please? This is  
11 Joro.

12 MR. TURK: Yes, I'm sorry. When we indicated to  
13 the Board what the projected need date was, we did that with  
14 the intention of being sure that the Board understands that  
15 although the licensee would like to commence construction by  
16 the stated date, by the year 2000, the date on which it is  
17 imperative for their facilities to have the ISFSI available  
18 does not come until the year 2005.

19 We understand that PFS is a commercial entity.  
20 They would like to be able to market their facility to  
21 potential users. They would like to have contracts in hand  
22 in order to be able to assure the financial success of the  
23 project. We are aware of that, but we are also aware of the  
24 fact that there is a competing universe of needs that we  
25 have to look at as well as this facility.

1           We could not simply drop the review of ISFSIs  
2 proposed by individuals reactor licensees around the country  
3 in order to accommodate PFS's request because that could  
4 result in plants other than those which are members of this  
5 consortium from being able to operate. Other plants may be  
6 forced to shut down, so we think the need date is an  
7 important consideration for the Staff in allocating its  
8 resources.

9           Having said all that, I think I have to assure you  
10 as well that the Staff is progressing with review of this  
11 ISFSI, and of the Holtech casks on an expeditious schedule.  
12 We have contractors in place who are conducting the review  
13 of the ISFSI for us. As mentioned, we have the Center for  
14 Nuclear Waste Regulatory Analysis and Oak Ridge National  
15 Laboratory working on the SER and EIS respectively.

16           Staff personnel are also working on portions of  
17 the safety review and we are not delaying our review of this  
18 facility or of the Holtech or the Sierra Nuclear casks  
19 because of other persons' needs, but there is this delicate  
20 allocation of resources that has to take place.

21           The Board in its order of -- I think it was the  
22 June 5th order -- made a very interesting observation. You  
23 pointed out that perhaps for some contentions the Staff  
24 review might be completed earlier, and you seized upon the  
25 quality assurance contention.

1 I would like to mention to you at this time that  
2 in fact back in 1996 when Private Fuel Storage was applying  
3 for an ISFSI to be located at the site of the Mescalero  
4 Apache Reservation, they had submitted a quality assurance  
5 plan. That plan was reviewed and approved by the Staff and  
6 that was by letter dated September 16, 1996. The Staff  
7 issued approval of PFS Quality Assurance Program.

8 It is my understanding that in the current  
9 application which PFS has submitted for use at this site,  
10 they are using the same Quality Assurance Program. I have  
11 not done a line by line comparison, but it is my  
12 understanding that they have resubmitted what has already  
13 been approved for another site to be incorporated into this  
14 license.

15 If in fact it is the same program, and it is my  
16 understanding that it is, then in fact the Staff review has  
17 been completed and approval has been issued, but that  
18 doesn't mean that the Staff personnel who would be involved  
19 in going to hearing on that issue would be available to go  
20 through all the different hearing-related tasks at this time  
21 without impacting their ability to complete the review of  
22 other areas for this facility as well as their review of  
23 other things that they are involved in.

24 Because there is a need to try to use our  
25 resources in an efficient manner, as well as the fact that

1 for most issues a safety review cannot be completed by the  
2 end of this year, that we have taken what has been described  
3 as our best and final offer and said we are not ready to go  
4 to hearing until -- we are not ready to take a position on  
5 contentions until December of '98.

6 JUDGE BOLLWERK: All right. Anything further the  
7 Applicant wants to say with respect to that -- this issue?

8 MR. BLAKE: I can confirm that they are right. It  
9 is essentially the same plan and therefore the degree to  
10 which the Staff's review may be advanced by knowing that or  
11 having that confirmed I am able to state.

12 JUDGE BOLLWERK: All right. Anything any of the  
13 Intervenor parties want to say with respect to anything they  
14 have heard up to this point? -- and Ms. Chancellor, you can  
15 move the microphone. Do you want to speak first or do  
16 you -- nothing to say?

17 MS. CHANCELLOR: I have something to say. I don't  
18 care whether I am first or last.

19 JUDGE BOLLWERK: Why don't you go ahead then.

20 MS. CHANCELLOR: Okay. My understanding is there  
21 is a reference to a March 18 letter about the utility's need  
22 for fuel storage.

23 MR. TURK: May 18.

24 MS. CHANCELLOR: May 18?

25 MR. TURK: Right.

1 MS. CHANCELLOR: Is that part of your responses to  
2 the REI? We have not seen this letter and again I would  
3 reiterate that there seems to be some correspondence that we  
4 are not getting.

5 For example, this May 18 letter seems to go to the  
6 need for the facility and that is critical to one of our  
7 contentions. We do check the Public Document Room but at  
8 best it can be two weeks before correspondence is  
9 assessioned in the PDR and sometimes it can take over a  
10 month so we would appreciate getting copies of relevant  
11 correspondence.

12 JUDGE BOLLWERK: Anything else?

13 [No response.]

14 JUDGE BOLLWERK: All right. Ms. Walker or Mr.  
15 Allen, anything you want to say?

16 MR. WALKER: No thanks.

17 MR. ALLEN: No.

18 JUDGE BOLLWERK: All right -- and Mr. Nelson, I  
19 take it then Ms. Chancellor is speaking for you?

20 MR. NELSON: Yes.

21 JUDGE BOLLWERK: All right. Anything further that  
22 the Applicant wants to say on this?

23 MR. BLAKE: No, only to note Denise's appropriate  
24 critique of our ability to get them correspondence.

25 MR. SILBERG: Our standard procedures are that

1 they get sent out. I can't confirm that they were or were  
2 not in this case, but we will check.

3 JUDGE BOLLWERK: All right. At this time let me  
4 as the Staff a couple questions, just so I make sure that I  
5 understand the parameters of what we are talking about in  
6 terms of the report that you have given us.

7 Am I correct that with respect to what we have  
8 referred to as the Group 2 issues, which are basically the  
9 safety issues that wouldn't be within -- on the December  
10 31st date that you are in a position, you think, by May 1st,  
11 1999, to reach a Staff position on those issues?

12 I am basing that on the schedule we were given  
13 that talked about discovery going through the 30th of June.  
14 My understanding is you backed that up two months and that  
15 gives us the date by which you reach the positions?

16 MR. TURK: That is my understanding and just to be  
17 sure we are on the same page, it is my understanding that  
18 those would be --

19 MR. WALKER: I'm sorry, I can't hear you very  
20 well.

21 MR. TURK: To be sure that we are all on the same  
22 page, it is my understanding that the contentions for which  
23 the Staff would be ready by May 1 of '99 involve the  
24 decommissioning contention, which is S; financial assurance,  
25 which is E, Utah E; the geotechnical, for which by the way



1 we don't expect a response to be in hand from PFS until  
2 December, that is contention L; and I believe contention --

3 JUDGE BOLLWERK: Is it contention O --

4 MR. TURK: No, I think --

5 JUDGE BOLLWERK: O, I think, is an environmental  
6 contention although it has some safety aspects to it.

7 MR. TURK: Right. I believe it's H which had to  
8 do with the thermal design and that lies into the cask,  
9 correct, that would be used.

10 For those we are projecting that we would be able  
11 to take a position by the end of April of '99.  
12 That is contingent of course on our receipt of the  
13 information from PFS and our review of it and our  
14 determination that it is adequate.

15 At this time when we give you that kind of  
16 projection, we are assuming that the information we receive  
17 from PFS will be suitable, acceptable to the Staff, in order  
18 for us to be able take a final position.

19 If the Staff finds a need at that point to go out  
20 for a second round of questions, that would postpone our  
21 ability to take a final position.

22 MR. BLAKE: Accepting all the provisos, I think it  
23 would also be Utah GG.

24 MR. TURK: That was my next question.

25 MR. BLAKE: I'm sorry.

1 MR. TURK: That has to do with the Transtore cask  
2 and I recognize that is on a different schedule than the  
3 Holtech. That would not -- I mean May 1st at least at this  
4 point is a good date for that as well?

5 MR. BLAKE: That is the earliest possible.

6 MR. TURK: All right, but please understand that  
7 is -- the earliest possible is not a -- we have no ability  
8 to sit here today in June and say at that time a review will  
9 be completed because we haven't seen the information yet.

10 MR. BLAKE: All right. Then let me move -- I  
11 think we mentioned this at the close of the security  
12 portion. What about the security plan issues that might be  
13 admitted -- again not knowing what those might be, but can  
14 you give us any kind of -- are we talking about a Group 1 or  
15 Group 2 or something beyond that?

16 MR. TURK: I think we could do that within the  
17 Group 1 framework of time. I was speaking with Mr. Gaskin  
18 earlier today and he told me that he anticipates being able  
19 to send out a round of questions this summer before the end  
20 of August. Assuming there is a 45 day response period for  
21 PFS and another 30 day period for us to review those  
22 responses, we foresee being able to take a position on  
23 contentions with the security plan by the end of this year.

24 JUDGE BOLLWERK: All right. One other question  
25 with respect to the SER. You are projecting I guess the SER

1 in September of 2000, if I have the correct --

2 MR. TURK: I believe that is correct. That is the  
3 complete SER, which would incorporate final reference to  
4 whatever casks are certified under the rulemaking process.

5 JUDGE BOLLWERK: All right. Now any hearings that  
6 were held with respect to safety issues before that SER is  
7 out. Although we would have your position, we wouldn't have  
8 the SER.

9 Is that going to cause in your estimation any  
10 problems in terms of the adequacy of the record?

11 MR. TURK: No. I believe we can supplement the  
12 record later. Of course, to the extent that the SER would  
13 contain information different from what we present in our  
14 testimony, that could present a difficulty in terms of  
15 closing the record at that time. There may be a need for  
16 further investigation by other parties of what the SER  
17 contains.

18 At this point I believe we are projecting two  
19 different SERs, one which would be site-specific. That  
20 would not be addressing the Holtech or the Sierra Nuclear  
21 cask but rather the site characteristics. That is projected  
22 for earlier than the September 2000 date.

23 I believe in Footnote 5 of our status report, we  
24 indicated that date to be October of '99. That is for the  
25 site-specific SER.

1 JUDGE BOLLWERK: That was another question I had.  
2 What -- well, you said it encompasses site-specific issues.  
3 Is it --

4 MR. TURK: For instance, the QA plan. Well, I  
5 should take that back, because QA may depend upon the  
6 vendor.

7 May I have a moment on that?

8 JUDGE BOLLWERK: Sure.

9 MR. TURK: I don't know the answer to that as I  
10 sit here, Your Honor. But there would be a number of issues  
11 that have to do with the site characteristics, such as  
12 flooding or hydrology, perhaps -- well, seismic wouldn't be  
13 ready on that schedule. Perhaps it would. I couldn't tell  
14 you definitively exactly which of the contentions would be  
15 wrapped in the SER. I would have to know more about what  
16 that SER will address.

17 Well, it's possible, for instance, Contention F on  
18 training, that's the kind of thing that does not relate to  
19 the casks, but rather to this applicant. Emergency  
20 preparedness, No. R, that is a site-specific type of issue.

21 JUDGE BOLLWERK: Would thermal design, for  
22 instance, just to take an example, would that be relevant to  
23 the cask or would that be site-specific?

24 MR. TURK: The contention, as I understand it,  
25 deals with whether the temperature which could be generated

1 at this time, for instance, during the summer months and  
2 there are a number of casks in close proximity to each other  
3 whether that temperature is within the design basis for the  
4 casks. So that, it would depends upon the casks to be  
5 utilized.

6 JUDGE BOLLWERK: All right. So if I were to look  
7 through these contentions, if they seem in some way to  
8 depend on the certification of the cask, then I should --  
9 that is a good indication that, in fact, we are talking  
10 about the SER which would be out in September of 2000 rather  
11 than the site-specific SER?

12 MR. TURK: Yes. And, in fact, you can also look  
13 at the fact that we pushed off Contention H and Contention  
14 GG from that first round because they were cask  
15 certification related. So that should also indicate to you  
16 that those would be the kinds of things that would be in the  
17 final SER rather than the initial one.

18 JUDGE BOLLWERK: One other general question, let  
19 me speak with you about, and then we will talk a little more  
20 specifically. Do you see -- I take it from what you  
21 provided us in your answer back in January about scheduling  
22 for this case, and the EIS, is there any way that we can go  
23 to hearing on EIS issues before you have issued the Final  
24 Environment Impact Statement?

25 MR. TURK: My reading of the regulation in 10 CFR

1 Part 51 leads me to say no. Your Honor, you may disagree  
2 with that. I believe the applicant has told me that they  
3 disagree with it. But there is a particular provision in 10  
4 CFR Part 51 which -- excuse me one minute while I find it.

5 [Pause.]

6 MR. TURK: It's 10 CFR Section 51.104, which state  
7 that in any proceeding in which a hearing is held on a  
8 proposed action and a Final Environmental Impact Statement  
9 has been prepared, where the hearing involves NEPA type  
10 issues, quote, "the NRC staff may not offer the Final  
11 Environmental Impact Statement into evidence or present the  
12 position of the NRC staff on matters within the scope of  
13 NEPA and this subpart until the Final Environmental Impact  
14 Statement is filed with the Environmental Protection Agency,  
15 furnished to commenting agencies, and made available to the  
16 public."

17 JUDGE BOLLWERK: All right. And, again, the FEIS  
18 date, at least projecting at this point, is September of  
19 2000. That's correct.

20 MR. TURK: Yes.

21 JUDGE BOLLWERK: Which means, in theory, the  
22 hearing date would have to -- subject to any discovery that  
23 might be given, would have to follow that date.

24 MR. TURK: At some point.

25 JUDGE BOLLWERK: Okay. I think -- just let me

1 make some general statements. I think -- what we plan to do  
2 is to issue some kind of a schedule that basically breaks  
3 the contentions up into three groups, along the lines that  
4 we outlined in, I guess, the June 5th order that Mr. Turk  
5 made reference to, if I have the right one.

6 Let me just check and make sure I am giving you  
7 the right date here. That's correct, it was June 5th.

8 At this point, I guess what we see, given what the  
9 staff has responded, and we are somewhat disappointed as  
10 well, but we feel, you know, they have given us -- this is  
11 their best offer at this point. Our authority to interfere  
12 or to move those dates up or to try to get them to something  
13 else is rather limited, I think we all feel.

14 Looking at that, I think, in general, probably,  
15 for the Group 1 issues, we are talking about a hearing  
16 sometime, perhaps mid-summer to early fall of 1999.  
17 Probably some kind of a hearing with respect to the Group 2  
18 issues in early 2000. And with respect to the Group 3  
19 issues, probably in the spring or early summer of 2001,  
20 given the staff's and given the regulation that seems to say  
21 that the hearing cannot fall until after the FEIS.

22 In terms of specific dates I think you need to  
23 know about at this point, you had all suggested that we go  
24 to -- allow an informal discovery to proceed for six months,  
25 which would put us at approximately December 31st. I think

1 we actually started on the 19th of May. If -- maybe we can  
2 talk about this in a second. If you see any benefit to  
3 giving an extra 15 days of informal -- or formal discovery,  
4 we could do that. I am not -- don't feel strongly about  
5 that either way.

6 That's a very long period. I am concerned that,  
7 as life moves along, that things don't get done, that things  
8 get put off. We are going to have to keep a close eye on  
9 that. I, obviously, am going to be very concerned if we  
10 come up to September, October and nothing has been done. In  
11 fact, we will talk a little bit about discovery. But at  
12 this point I think that is a date that we will go ahead and  
13 set and, as I say, we will give you a schedule that outlines  
14 this in a little bit more detail.

15 I think other dates will probably follow, at least  
16 for the Group 1 issues, with -- pretty much along the lines  
17 that you gave us in the proposed schedule. I think where  
18 you are going to see some deviations, when we get into the  
19 Group 2 issues, and understanding Ms. Chancellor's concern  
20 about having to do two things at once, I don't think there  
21 is any way we are going to be able to avoid that to a  
22 degree, to keep things moving along, and also to get these  
23 done in a timely manner. We are very concerned about having  
24 everything at the end and, to some degree, without dividing  
25 this into three groups, we are going to be faced with that



1 dilemma. And that's something I don't think you want to  
2 face, and something we don't want to face.

3 Let me ask you a couple of specific questions.  
4 First of all, with respect -- and this will affect how we do  
5 some of the scheduling. With respect to findings and  
6 conclusions after the hearing, and I'll direct this question  
7 to Ms. Chancellor, do you anticipate that your proposed  
8 findings in most instances are going to be what I would  
9 consider comprehensive? In other words, you are going to  
10 try to tell a whole story? Or if, for instance, the  
11 licensee filed a comprehensive set of findings, you would be  
12 in a position to say we agree with this, this, this, this,  
13 this, and we don't agree with this, and we will come up, we  
14 will have a separate finding on that?

15 I mean, normally, the licensee, who has the burden  
16 of proof, would be the first to file findings of fact under  
17 the rules. They generally will come in putting words in  
18 your mouth or requiring -- but with a fairly extensive set  
19 of findings which cover many matters that may not be in  
20 controversy.

21 On the other hand, you may want to tell your own  
22 story and try to be as comprehensive as they are being. I  
23 guess my question is, what is your preference? Can you live  
24 with responding to theirs with only -- with adopting the  
25 ones you don't have a problem with, or do you want to put

1 your own story out in terms -- complete?

2 MS. CHANCELLOR: It's difficult to talk about this  
3 in the abstract. And, you're right, I think the applicant  
4 will file substantial findings and conclusions, given the  
5 pleadings they have filed to date. I would like to --

6 JUDGE BOLLWERK: Let me tell you why I am thinking  
7 about it. I am thinking the difference between simultaneous  
8 filings and sequence filings, if everybody is going to give  
9 us the main story, then let's get them all simultaneously  
10 and have you respond to each other's. If you can live with  
11 a situation where you are responding to theirs, you are not  
12 -- you are going to adopt some and reject others, then maybe  
13 we can do a system -- sequence filing.

14 MS. CHANCELLOR: I would really like to consult  
15 with Dianne Curren on this, because she has practiced more  
16 before the NRC than I have, and she was unavailable today.  
17 Is that something I could --

18 JUDGE BOLLWERK: How long would you take, do you  
19 need to get back to us?

20 MS. CHANCELLOR: I think she will be available at  
21 the beginning of next week. So I could consult with her at  
22 the beginning of the week and let you know.

23 JUDGE BOLLWERK: All right. Could you get back to  
24 us, say, by the middle of next week?

25 MS. CHANCELLOR: Yes.

1 JUDGE BOLLWERK: All right.

2 MS. CHANCELLOR: And how would you like me to do  
3 that?

4 JUDGE BOLLWERK: I don't have -- can you send us a  
5 brief letter?

6 MS. CHANCELLOR: Certainly.

7 JUDGE BOLLWERK: Since this is on the record, I  
8 would just as soon keep it that way so everybody knows what  
9 we are talking about and what the responses have been.

10 MS. CHANCELLOR: Okay.

11 JUDGE BOLLWERK: Does the staff have any thoughts  
12 on that one way or the other?

13 MR. TURK: I have done it both ways. Given the  
14 fact that at some point in the hearing process the staff  
15 will be agreeing either with the applicant or the state, I  
16 think follow-on findings are probably a way of saving paper  
17 and saving effort for the Board to try to figure out  
18 respective positions. So I tend to think that follow-on  
19 findings might be the way to go.

20 There is a downside to that and that is that we  
21 have to review theirs first and that takes time, especially  
22 where we are litigating many contentions at the same time.  
23 So there is a need for that -- for us to have a period of  
24 time to review theirs and to make sure that our view of the  
25 record is the same as theirs.

1 JUDGE BOLLWERK: Well, the rules give you a whole  
2 10 days.

3 [Laughter.]

4 MR. TURK: Our response would be --

5 JUDGE BOLLWERK: That's one advantage, of course,  
6 to simultaneous filings, is any theory you might have 30  
7 days or whatever, everybody will get the same to review  
8 findings and come back. So that's something to take into  
9 account.

10 MR. TURK: I can -- no, I can live with either.  
11 If we are held to 10 days, I would rather file my own.

12 JUDGE BOLLWERK: All right.

13 MS. CHANCELLOR: Could I just clarify?

14 JUDGE BOLLWERK: Sure.

15 MS. CHANCELLOR: With simultaneous filings, the  
16 staff, the applicant and the intervenors would file at the  
17 same time --

18 JUDGE BOLLWERK: Right.

19 MS. CHANCELLOR: -- their findings and  
20 conclusions? Then you would have 30 days to file a  
21 response?

22 JUDGE BOLLWERK: Basically, --

23 MS. CHANCELLOR: Simultaneous response?

24 JUDGE BOLLWERK: Simultaneous responses. That's  
25 correct. In other words, everyone would have laid their

1 case out as they understood it, and then everyone would have  
2 a chance to respond whether they agree with the staff, the  
3 applicant, disagree, and to make any --

4 MS. CHANCELLOR: And the follow-up findings, you  
5 would have 10 days to review the applicant's filing?

6 JUDGE BOLLWERK: I would refer you to the rule.  
7 There's a rule that deals with proposed findings and I  
8 haven't got the citation in front of me.

9 MS. CHANCELLOR: Okay.

10 JUDGE BOLLWERK: But, basically, it says 30 days  
11 for the findings from the applicant, having the burden of  
12 proof, 30 days for a response. The staff is given an  
13 additional 10 days to look at both of those pleadings.

14 MS. CHANCELLOR: Oh, I see. Okay.

15 JUDGE BOLLWERK: And I think there is a five day  
16 period for reply. So that's the way the rule lays it out.

17 MR. SILBERG: Of course all of those dates are  
18 subject to modification.

19 JUDGE BOLLWERK: Absolutely, by the Board. On the  
20 other hand, if we are going to keep this moving, I am not  
21 sure how much latitude we are going to have. We will have  
22 to see.

23 MR. SILBERG: We don't expect -- is it shorter?  
24 Is it possible that we --

25 JUDGE BOLLWERK: In part, that may depend on how

1 much hearing time we spend. I have sort of blocked this out  
2 with about two month periods for hearing. If we do less  
3 hearing, then we may have more time for findings. If we do  
4 more hearing, who knows? So. Yes?

5 MR. TURK: Could we ask that whatever the schedule  
6 is for proposed findings of fact, that we wait until we see  
7 how much testimony there is and how extensive the record is  
8 before we are required to indicate whether we want to do  
9 follow-on or simultaneous filings?

10 JUDGE BOLLWERK: Well, when I said a schedule, I  
11 mean I would like to sort of get some -- I mean we can  
12 change things. I would just as soon know people's general  
13 preference at this point. If it then looks, on the basis  
14 of, say, the Group 2 issues don't look like they are going  
15 to work that way, we'll be glad to change it. But if I am  
16 going to set a schedule, I would like to at least have, you  
17 know, people's general preference at this point and move on  
18 from there.

19 I feel like we need to get some structure here to  
20 let people know what -- how this is going to proceed. And,  
21 again, I am not -- you have dealt with me enough to know I  
22 am not someone that is inflexible, I will listen to what you  
23 have to say and we will proceed from there.

24 If you want to say something more on that subject,  
25 you can certainly file something in the middle of next of

1 week, as well, if that's --

2 MR. TURK: Thank you.

3 JUDGE BOLLWERK: -- it would be useful to you to  
4 have additional time.

5 MR. TURK: Thank you.

6 JUDGE BOLLWERK: All right.

7 MR. BLAKE: Just to get in my two cents on this  
8 topic.

9 JUDGE BOLLWERK: Right. You're sort of on the  
10 hook for -- but, please, whatever you would like to say, Mr.  
11 Blake.

12 MR. BLAKE: I would have some preference for  
13 simply following what the regulations have laid out as a way  
14 of approaching these, even though it gives us the least  
15 amount of time up front. But laying ours out and then  
16 giving the other parties an opportunity to reach to them  
17 and, finally, with an opportunity to reply by us would be my  
18 preference.

19 JUDGE BOLLWERK: One thing the parties should be  
20 aware of, and something we are very aware of is that there  
21 is now sort of a commitment that the Board, to the degree it  
22 can, issues initial decisions within 60 days of the time  
23 that we have received all the findings. So that's something  
24 we have to bear in mind and keep. And one of the reasons  
25 probably you will have a shorter period is because we need

1 to have enough time to look at all those papers, and if you  
2 have 90 days, there is no way we are going to get done in 60  
3 days, I can almost assure you of that. So just given the  
4 amount of time and the amount of paper that you can generate  
5 in 90 days.

6 MR. BLAKE: Can I return to one topic where I also  
7 would like to weigh in?

8 JUDGE BOLLWERK: Sure. Certainly.

9 MR. BLAKE: And that is with respect to the  
10 staff's ability to go to hearing on environmental issues.  
11 You asked for Mr. Turk's input on that.

12 JUDGE BOLLWERK: Yes.

13 MR. BLAKE: All the parties filed their thoughts  
14 on this. Ours was filed on December 30th, 1997. And I  
15 would just remind the Board of our view there, which we  
16 continue to maintain, as stated at page 6 and following,  
17 which was we believe that we could go to hearing on factual  
18 issues and that the one problem with the staff's ability to  
19 go to hearing under the 51.104(a)(1), which Mr. Turk also  
20 referred to, was if you are involved in an ultimate cost  
21 benefit balance determination, and we didn't see any of the  
22 contentions as now allowed by the Board, as involving that  
23 ultimate determination. So we continue to maintain that  
24 position, and I wouldn't want to let Mr. Turk's be the only  
25 position stated on the record here.



1 JUDGE BOLLWERK: All right.

2 MS. CHANCELLOR: Your Honor, we would have a  
3 problem if we -- if, for example, we went to hearing on the  
4 factual issues, the staff took a position, and the burden  
5 was on us to reopen the record based on the staff's Final  
6 EIS. That that is inappropriately shifting the burden to  
7 the state to reopen -- or an intervenor, to reopen the  
8 record. And so our preference certainly would be, and we  
9 believe -- we take the same reading of the rule as Mr. Turk,  
10 that we have to wait until the Final EIS before we got to  
11 hearing on the NEPA issues.

12 JUDGE BOLLWERK: All right. Let me say also  
13 something with respect to summary disposition. I want -- I  
14 tend to encourage it. Some other members of this panel  
15 don't feel the same way about it, but I am one that does. I  
16 don't have a problem with summary disposition.

17 What I do have a problem with is getting a lot of  
18 paper at the end. I suspect what we will do is set up a  
19 schedule for summary disposition where, if you file, let's  
20 say, more than 30 days before the end of formal discovery,  
21 you will have a much wider latitude in terms of the number  
22 of pages you can file with respect to the issues in a  
23 particular group. If you wait until after that period, you  
24 will probably have about 25 pages and about 15 days after  
25 discovery closes.

1           So I guess the message in that is, if you have  
2 summary disposition, in terms of your formal discovery, look  
3 at that first, get those matters taken care of and file your  
4 motion. It will give you more time and more pages. All  
5 right.

6           MR. SILBERG: If I can make one comment on that.

7           JUDGE BOLLWERK: Sure.

8           MR. SILBERG: Given the fact we don't know who is  
9 going to be filing which formal discovery, I would hope that  
10 the cut-off date would be somewhat after the close of formal  
11 discovery, because, typically, people will get answers at  
12 the very last minute, and that would put kind of the control  
13 over which version of summary judgment you get on the  
14 opponent. By delaying responses to discovery, he can force  
15 the proponent of a summary judgment motion into the much  
16 more constrained format of your second choice. So I would  
17 encourage the Board, to the extent you are thinking along  
18 those lines, to have the cut-off date be somewhat -- a short  
19 period after the close of formal discovery rather than  
20 before the close of formal discovery.

21           JUDGE BOLLWERK: I will think about that. I am  
22 not sure that gets the same incentive that I wanted. I  
23 understand the problem. And maybe a better way to deal with  
24 it is you are filing summary disposition related discovery  
25 requests and you think someone is delaying them, let us know

1 that.

2 All right. We'll think about that, though, and  
3 I'll take your suggestion under consideration.

4 I guess at this point, until we issue an actual  
5 schedule, and we will have a schedule with dates. Some of  
6 them will be specific, some of them will be more general.  
7 For instance, I said the hearings will probably run on a two  
8 month period. We may give you specific dates, obviously.  
9 That is subject to a number of things.

10 I would also -- there will come a point where we  
11 need your input in terms of how long you think it is going  
12 to take to go to hearing. Up to this point we have asked  
13 and haven't received anything back. We have tried to make  
14 the best judgment we can, based on our look at the  
15 contentions. If that turns out not to be right, as I said,  
16 the more -- less time we spent in hearing, the more time you  
17 probably have to do filings, or proposed findings. So it's  
18 something to consider.

19 We may have underestimated some of these and that  
20 may run into a problem, but we'll just have to work through  
21 this.

22 Let's talk for a second then about the status of  
23 discovery up to this point. Let me just say -- ask one  
24 other question. Anyone, in terms of the folks that have  
25 phoned in, have anything to say about what the Board has

1 talked about up to this point, in terms of the schedule?

2 Ms. Walker?

3 MS. WALKER: No.

4 JUDGE BOLLWERK: Mr. Allen?

5 MR. ALLEN: I don't.

6 JUDGE BOLLWERK: All right. Mr. Nelson, do you  
7 want to express -- Ms. Chancellor hasn't said anything, but  
8 if you have something you want to say?

9 MR. NELSON: No, I have nothing additional.

10 JUDGE BOLLWERK: All right. Who would like to go  
11 first in terms of discovery status? Any volunteers? Mr.  
12 Blake?

13 MR. BLAKE: Sure. I'll start. There haven't been  
14 any exchanges of discovery between the parties that I am  
15 aware of. I think that at least, I can speak for the state,  
16 and for ourselves, with respect to our planning in order to  
17 be able to accommodate requests for people. I, obviously,  
18 have more knowledge about myself, but there have been some  
19 conversations with the state. What we are doing is just  
20 going through the files and pulling out all documents which  
21 relate, in our view, to any of the contentions, and then  
22 eliminating from that the privilege kinds of problems within  
23 the documents, or documents themselves.

24 But, generally, just pulling all the documents  
25 together, and we are going to make them available in Salt

1 Lake.

2 MR. ALLEN: [Inaudible.]

3 MR. BLAKE: Hello?

4 JUDGE BOLLWERK: Mr. Allen, did you have something  
5 to say? Apparently not.

6 MR. ALLEN: No, I didn't.

7 JUDGE BOLLWERK: All right. Go ahead, Mr. Blake.

8 MR. BLAKE: And our intention is, as we have told  
9 the other parties, but maybe not the Board, is to make those  
10 documents available at a central location in Salt Lake City  
11 where we will be able to establish times fairly flexibly for  
12 any of the intervening parties to come and review the  
13 documents. And that's about as far as we have gone in our  
14 planning.

15 We have spent now weeks looking through documents.  
16 We still have more time to go. And my internal schedule for  
17 being able to make those documents available -- maybe they  
18 won't all be at that time, but enough for people to  
19 certainly digging into, would be the end of this month.

20 JUDGE BOLLWERK: The end of June?

21 MR. BLAKE: Yes, sir.

22 JUDGE BOLLWERK: Okay.

23 MR. BLAKE: And that's really about as far as we  
24 have gone. And we have also thought internally about  
25 sending out a fairly informal letter to the other parties

1 that we mean to conduct informal discovery with saying, in  
2 essence, make available all that you know about this and  
3 tell us who think we also could talk with.

4 JUDGE BOLLWERK: Given that, Ms. Chancellor, do  
5 you think it is time for you to send them a letter, or do  
6 you want to wait and see what you get and then come back? I  
7 mean it can be handled one of two ways?

8 MS. CHANCELLOR: We have had informal discussions.  
9 We have tried to centralize our files and remove privileged  
10 information. There may be some other files at agencies.  
11 But I would -- my preference would be to have files in  
12 centralized locations and let each side have access to the  
13 other's files. And then from there, if there is missing  
14 information, to send out specific discovery requests.

15 Additionally, I have spoken with Mr. Silberg about  
16 having some sort of an agreement that the state can obtain  
17 privileged or proprietary information because some of the  
18 responses to the REI contained proprietary or confidential  
19 information. And my understanding that PFS is in the  
20 process of drafting an agreement that would allow the state  
21 access to privileged information. And we have tried to do  
22 the same thing with Holtech, although for privileged  
23 information with respect to the casks. I have sent a letter  
24 to Holtech and I copied you on that. And to date, we  
25 haven't had a response from Holtech.

1 MR. SILBERG: I spoke with the Holtech yesterday  
2 about this and I think they are in the process of preparing  
3 a similar agreement. Ms. Chancellor is correct, we are  
4 having a proprietary agreement drafted. I hope to have that  
5 available next week with the state.

6 JUDGE BOLLWERK: All right. Mr. Turk, anything  
7 you want to say on the subject of discovery at this point?

8 MR. TURK: Just a question, since I have not been  
9 a party to the conversations that Mr. Blake and Ms.  
10 Chancellor referred to. Is it contemplated that there would  
11 be two centralized locations so that documents made  
12 available in Salt Lake City would also be available in  
13 Washington?

14 MR. BLAKE: We had not contemplated that.

15 MS. CHANCELLOR: No, we haven't either.

16 MR. TURK: So we are basically looking at  
17 documentation production in Salt Lake City?

18 MS. CHANCELLOR: That's correct.

19 MR. BLAKE: At least at a centralized location  
20 where you won't have to go around. We are trying to make it  
21 as easy as possible.

22 JUDGE BOLLWERK: Is that something you can live  
23 with, in terms of staff documents?

24 MR. TURK: Staff documents, I don't understand to  
25 be covered by that. The staff's documents are a matter of

1 public record for the most part and would be in the PDR and  
2 LPDR.

3 JUDGE BOLLWERK: All right. Is that --

4 MR. TURK: I am not contemplating doing a document  
5 production to that central repository that they are talking  
6 about.

7 MR. SILBERG: Well, these are really central -- I  
8 mean each of the parties is having a room somewhere. We  
9 will have one in our Salt Lake City law firm. The state  
10 will undoubtedly have a room in one of their state  
11 buildings. It is not a single repository for this  
12 proceeding, but rather each party would have its own  
13 document collection available in a central location for that  
14 party.

15 MR. TURK: Well, as I indicated, the staff's  
16 documents are publicly available through the PDR and LPDR.  
17 I should also note, just for clarity purposes, that there  
18 are always documents which are deemed to be pre-decisional  
19 or otherwise protected from disclosure. Those are not the  
20 PDR or LPDR. But we wouldn't be making a voluntary  
21 disclosure of those in any event.

22 JUDGE BOLLWERK: At a minimum, in terms of letters  
23 that might be sent back and forth identifying areas of  
24 concern or areas of document, are you going to be disclosing  
25 the fact that you have proprietary documents and what those

ANN RILEY & ASSOCIATES, LTD.  
Court Reporters  
1025 Connecticut Avenue, NW, Suite 1014  
Washington, D.C. 20036  
(202) 842-0034



1 are, or privileged documents and what those are?

2 MR. BLAKE: We had not gotten that far in our  
3 planning. Clearly, there are some proprietary documents and  
4 those are the ones that Mr. Silberg and Ms. Chancellor  
5 discussed in terms of getting an agreement about.

6 There also are privileged documents, obviously, in  
7 the client files with regard to attorney-client privilege,  
8 at least. We hadn't been generating any list of all of  
9 those documents, which sometimes is asked for in formal  
10 discovery, but we certainly haven't been willing to start  
11 this process that way.

12 Frankly, we don't have any experience with  
13 informal. And until you used that term, Judge, -- so we are  
14 kind of struggling with how much is informal and easy-going  
15 and how much is kind of tough stuff. And we are kind of  
16 trying to avoid -- I think all the parties are struggling  
17 and working at trying to avoid the normal litigious approach  
18 to discovery.

19 JUDGE BOLLWERK: Right. The only thing I would  
20 observe is if you know documents that are privileged that  
21 seem to be within the scope of what Ms. Chancellor, for  
22 instance, is going to ask for, why not give her a list now,  
23 and maybe she will want it and maybe she won't. That may  
24 save, you know, an interrogatory of some kind later, that  
25 you can simply -- you can argue about the privilege question

1 rather than having to go back and forth about what documents  
2 are involved. So, think about that anyway.

3 And I guess the same with respect to any  
4 pre-decisional documents that the staff may have. Again,  
5 identification may be a good idea even if you don't intend  
6 at this point to turn them over.

7 MR. BLAKE: Could I hear from the other parties  
8 and whether or not they are prepared to follow the lead that  
9 the state and we have taken with regard to all of their  
10 documents?

11 JUDGE BOLLWERK: All right. Ms. Walker, in terms  
12 of OGD?

13 MS. WALKER: Yeah, we don't really have any  
14 documents.

15 JUDGE BOLLWERK: Well, --

16 MS. WALKER: I mean not in our possession. So we  
17 would have to get them first.

18 JUDGE BOLLWERK: I take it if, for instance, Mr.  
19 Blake or Mr. Silberg sent you a letter with some general  
20 guidelines about what they are looking for, you would be  
21 willing to look through your files and make those available,  
22 obviously?

23 MS. WALKER: Yeah. But in terms of things that  
24 our clients have, you know, we may have to go get them  
25 first.

1 JUDGE BOLLWERK: All right. It sounds like she  
2 would like some direction from you all in terms of what you  
3 are looking for. Is that --

4 MR. BLAKE: Okay. I think we can accommodate her.

5 JUDGE BOLLWERK: All right. Mr. Allen, in terms  
6 of Castlerock and Skull Valley?

7 MR. ALLEN: We are in essentially the same  
8 position. We don't have enough documents that having a room  
9 --

10 JUDGE BOLLWERK: Sir, you are going to have to  
11 speak up a little bit.

12 MR. ALLEN: We are in the same position. We don't  
13 have enough documents that it would make sense to have a  
14 special room available. But if we received a general  
15 request from parties giving guidelines as to what they were  
16 looking for, we would be able to make that available.

17 JUDGE BOLLWERK: Would the state, for instance,  
18 have any problem with putting their documents in your room,  
19 whenever, if that was --

20 MS. CHANCELLOR: We would be glad to provide  
21 filing space if they need it.

22 JUDGE BOLLWERK: All right. Is that something you  
23 would be willing to do, Mr. Allen?

24 MR. ALLEN: I think so, yes.

25 JUDGE BOLLWERK: And Ms. Walker as well? Assuming

1 you are able to identify something?

2 MS. WALKER: Sure. Sure.

3 MR. BLAKE: I think we could accommodate Mr.  
4 Allen, too. Castlerock has a number of contentions about  
5 how much they are hurt and troubled and they must have some  
6 basis for that. So we will have a number of requests. If I  
7 have to detail them, I can. But I would hope that that  
8 amount of hint would lead to quite a stack of documents that  
9 Castlerock probably already has.

10 JUDGE BOLLWERK: All right. Anybody thought yet  
11 about interviewing any potential witnesses or asking for  
12 identification of potential witnesses?

13 [No response.]

14 JUDGE BOLLWERK: All right. Again that is another  
15 aspect of this. I recognize you probably want to see the  
16 documents first, but don't -- again my only concern is with  
17 the six month time period, please don't wait till the end.  
18 Put pressure on yourselves and everyone else, so is there  
19 anyone at this point that has any questions about informal  
20 discovery or thinks the process just isn't working and we  
21 ought to just abandon it and go right to formal discovery?

22 MR. BLAKE: I suspect, Judge Bollwerk, as we move  
23 forward, we'll be back to chat with you and I hope that your  
24 door will be open for us to work out or talk with you.

25 JUDGE BOLLWERK: Absolutely.

1 MR. BLAKE: From time to time as we -- I don't  
2 think any of us really have enough experience to know how  
3 far we can go or how easy a task it will be.

4 JUDGE BOLLWERK: All right. Excuse me. We will  
5 probably set a date for another status report, perhaps  
6 written, perhaps we will get back with you orally.

7 Maybe you all want to express a preference about  
8 whether you would prefer to have -- we can do a video  
9 conference or a teleconference or just simply file a written  
10 status report.

11 I would think something like 30 or 45 days we  
12 would want to hear back again. I will set that out in an  
13 order in terms of more detail but I think we want to -- at  
14 that point you should have had at least 30 days with your  
15 document repositories and maybe have a better idea of  
16 exactly where you are going.

17 I guess at this point I don't have anything  
18 further. As I say, we will be issuing -- I will have to  
19 wait and hear from Ms. Chancellor and I think Mr. Turk wants  
20 to file in terms of findings of fact and conclusions of law,  
21 but we will sort of look to issuing some kind of a general  
22 schedule that will outline how we see this proceeding going  
23 forward with some dates and days on which we think things  
24 ought to happen, and that will be sort of the guideline that  
25 we use for this proceeding.

1 Anything that the other two Board members want to  
2 say at this point? Anything either of the parties want to  
3 bring to the Board's attention with respect to discovery or  
4 anything else that we may need to talk about?

5 MR. BLAKE: We are hopeful that the Staff will not  
6 hold back if their schedules improve.

7 JUDGE BOLLWERK: I think Mr. Turk will be the  
8 first one to let us know, I suspect.

9 MR. TURK: We won't hold back, Your Honor.

10 JUDGE BOLLWERK: All right -- and at this point,  
11 you know, as I say the only thing -- the Commission monitors  
12 these proceedings. If they are not happy with what is going  
13 on, they'll tell us. They are not shy so we will -- we may  
14 be waiting to hear from them. I have no idea, but I can't  
15 do that obviously. We have to proceed forward on the basis  
16 of basis of the information we have and maybe once the  
17 schedule comes out, the Commission may think things ought to  
18 be done differently and they can tell us that. I mean that  
19 is their prerogative.

20 All right then. Anything from the folks on  
21 teleconference they want to bring to the Board's attention?

22 Ms. Walker?

23 MR. WALKER: No. Thank you.

24 JUDGE BOLLWERK: Mr. Allen?

25 MR. ALLEN: No. Thank you.

1 JUDGE BOLLWERK: Okay. Mr. Nelson?

2 MR. NELSON: No. Thank you.

3 JUDGE BOLLWERK: Is it still snowing there?

4 MR. NELSON: It is in the mountains. We have  
5 got -- it's still raining and we have got about six to eight  
6 inches going over the summit.

7 MS. CHANCELLOR: Your Honor, I assume that the  
8 schedule will change if there are substantial changes to the  
9 license applications -- for example, Holtech, we are  
10 expecting some license amendments with that, and maybe the  
11 Applicant has some license amendments too, so I assume that  
12 any schedule that you issue will be amenable to change based  
13 on whether we file additional contentions or that sort of  
14 thing.

15 JUDGE BOLLWERK: All right, well, on the  
16 condition that, you know, the late filed contentions come  
17 in, we will have to deal with those on an individual basis,  
18 fit them in someplace if they are admitted and deal with  
19 them at that point.

20 Again if the Staff's dates slip, then that  
21 obviously may affect some other things, so we will just have  
22 to look and see how those things proceed -- to answer that.

23 One of the other things we probably will do with  
24 this order is set some probably 30 days in terms of filing  
25 late-filed contentions with respect to, for instance, things

1 like the SER, the DEIS, the EIS, so that you will have a  
2 definite date by which we will need to have your late-filed  
3 contentions if there are any.

4 MS. CHANCELLOR: Thank you.

5 JUDGE BOLLWERK: All right.

6 MR. TURK: I assume however that the usual rule  
7 would apply, that something that is mentioned in the SER, if  
8 it was available in an Applicant document beforehand, would  
9 not be deemed to be the basis for a timely late-filed  
10 contention.

11 JUDGE BOLLWERK: Right. Well, I mean we will have  
12 assess that, given the general rules about if you know about  
13 something you are supposed to bring it to the Board's  
14 attention as soon as possible in terms of filing late-filed  
15 contentions. That is correct.

16 MR. TURK: I didn't want the State or someone to  
17 believe that just because something appears in the SER that  
18 that constitutes grounds for admission of a late-filed  
19 contention if the matter appeared somewhere else first.

20 JUDGE BOLLWERK: I mean the general case law says  
21 when you know about something you are supposed to bring it  
22 to the Board's attention as promptly as possible in terms of  
23 late filed contentions, so it is a question of what is out  
24 there now and what the SER might say, or the EIS or the DEIS  
25 or anything else.



1 All right. If nothing else, why don't we go ahead  
2 and adjourn. I appreciate everyone's patience today.

3 I think we got a lot accomplished and we will  
4 probably be hearing back from you in probably 45 days on the  
5 status of discovery. Again, with respect to informal  
6 discovery, if you have some questions, feel free to give me  
7 a call. If I can help out, we will.

8 Judge Kline also makes procedural rulings from  
9 time to time, so --

10 [Laughter.]

11 JUDGE BOLLWERK: -- so he can help you out as  
12 well.

13 JUDGE LAM: Don't call me, okay?

14 [Laughter.]

15 JUDGE BOLLWERK: And again thank you very much.  
16 Have a good afternoon and a safe flight back to Salt Lake  
17 City and we stand adjourned.

18 [Whereupon, at 2:01 p.m., the hearing was  
19 concluded.]

REPORTER'S CERTIFICATE

This is to certify that the attached proceedings  
before the United States Nuclear Regulatory Commission in  
the matter of:

NAME OF PROCEEDING: PRIVATE FUEL STORAGE, L.L.C.  
(Independent Spent Fuel Storage  
Installation)

DOCKET NUMBER: 72-22-ISFSI

PLACE OF PROCEEDING: Rockville, MD

were held as herein appears, and that this is the original  
transcript thereof for the file of the United States Nuclear  
Regulatory Commission taken by me and thereafter reduced to  
typewriting by me or under the direction of the court  
reporting company, and that the transcript is a true and  
accurate record of the foregoing proceedings.

A handwritten signature in cursive script, reading "Ann Riley", is written over a horizontal line.

Ann Riley

Official Reporter

Ann Riley & Associates, Ltd.